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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1954

NO. 755

FRANK CAMMARATA, Petitioner

v.

STATE OF MICHIGAN

On Application for Certiorari to the Supreme Court of the State of Michigan

---

BRIEF OPPOSING PETITION FOR CERTIORARI

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I

Opinion Below

The opinion of the Supreme Court of Michigan is officially reported as *In re Cammarata,* 341 Mich 528; and it is published unofficially sub nom. *In Re Cammarata's Petition,* 67 N.W. 2d 677.

II

Jurisdiction

We concede that the petition for certiorari was filed within the time extended by order of this Court.

Jurisdiction is invoked under 28 U.S.C. § 1257 (3) but it is our position that in the court below the first question now presented was not raised and that the petition for certiorari presents no substantial federal question.

III

Counter-Statement of the Case

Pursuant to Revised Rule 40, § 3, we point out the following inaccuracies and omissions in petitioner's statement of the case:

1. On the 26th day of February, 1931, upon sentencing Frank Cammarata to serve a prison term of 15 to 30 years upon conviction of robbery while armed with a dangerous weapon, *People v. Cammarata*, 257 Mich. 60, the trial judge noted in his statement accompanying the mittimus that "upon completion of his term, defendant is to be held for the U. S. Immigration Authorities for deportation," and it was noted in the prisoner's indeterminate sentence record that "at the expiration of sentence United States immigration officers are to be notified,[1] as they have a warrant for him, and he is under $50,000 bond."

2. On pages 5, 6, 7 and 8 of his petition for certiorari, counsel summarizes certain correspondence which passed between immigration officials and state parole officers commencing July 29, 1946 and ending January 20, 1947 with the letter signed by the legal investigator for the Michigan parole bureau (Exhibit 15, p. 21) upon which counsel relied in the court below to sustain his position that such letter constitutes a waiver of jurisdiction over this prison inmate. Since the matter is in dispute we reserved the privilege of arguing the point, contending that such letter referred to Cammarata's application for pardon, and the Michigan

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[1]

The documents to which reference is made in this paragraph should be found upon the first 4 pages of the record on file in this Court. They so appear in the original on file in the Michigan Supreme Court.

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Supreme Court agreed. Therefore, for a satisfactory analysis of such correspondence, we choose to stand on the opinion of the court below.

3. It is stated on page 8 of the petition for certiorari that during 1951, 1952 and 1953, petitioner resisted extradition from Ohio to Michigan. We would add that during the course of such resistance to Michigan's justice, petitioner sought and was denied a writ of habeas corpus by the court of common pleas, Trumbull county, Ohio. The court of appeals of the 7th Judicial District of Ohio affirmed and the Supreme Court denied appeal. This Court denied certiorari, *Cammarata v. Ohio,* 345 U.S. 998; rehearing denied, 346 U.S. 842.

IV

Manner in which Federal Questions Raised

It is our position that the first question now presented was not raised in the Michigan Supreme Court,[2] nor was it decided by the court below. In support of this contention we publish as Appendix "A," a copy of Cammarata's petition for habeas corpus filed in the Michigan Supreme Court and we respectfully submit that a careful reading of that document fails to disclose any claim that the Governor's conditional pardon invaded a field reserved to the Federal Government.

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[2]

"1. Whether the State of Michigan has illegally incarcerated petitioner for violating a condition subsequent of an executive pardon, inasmuch as said condition, viz., "Must never return to the United States" is devoid of legal efficacy as an attempted invasion by the Governor of the State of Michigan of a field reserved exclusively to the national government by the United States Constitution?"

V

Reasons for Opposing Petition for Certiorari

A. Petitioner's argument runs something like this: the Governor of Michigan granted Cammarata a pardon placing him in custody of the warden (Exhibit 6) "for delivery to Immigration officials if and when called for for deportation to Italy," upon a condition subsequent that petitioner "Must never return to the United States." Such a condition subsequent violated the Federal Constitution by invading a field occupied exclusively by Federal Authority. Therefore, it was void, and being invalid, the instrument of pardon became absolute and Cammarata must go free although still owing a debt to the State of Michigan.

This question was not clearly raised in the court below. It does not appear in Cammarata's petition for writ of habeas corpus (Appendix "A," post, p. A-1). That document was predicated upon 3 propositions: (1) that the Michigan parole authority was without jurisdiction to adjudge Cammarata a parole violator and that its want of jurisdiction arose (a) from the fact that it never acquired jurisdiction over the person of Cammarata and (b) from the circumstances that it effectively waived jurisdiction over Cammarata in 1946 and 1947; (2) that the Michigan parole authority never acquired jurisdiction over the person of Cammarata because of certain facts enumerated in paragraph 5 of said petition for habeas corpus under subparagraphs "A" to "H" inclusive; and (3) that the Michigan parole authority effectively waived any further claim to Cammarata because of certain specific facts enumerated in subparagraphs "A" to "C," inclusive, of paragraph 6 thereof. In none of these allegations is it claimed that the Governor usurped Federal authority.

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Nor is there any substance to petitioner's claim.

Of course, the matter of deportation of aliens, the power and duty to exclude or expel, is for the Congress to regulate and its designated Federal authority to execute.[3] But Michigan has not legislated within this exclusive Federal field, nor have Michigan officials in any manner interfered with the Immigration Service of the Department of Justice.

What happened was simply this: a prisoner of Michigan applied to the Governor for clemency; in so doing, he expressed a desire to return to his native Italy; the Governor commuted his sentence, thus making the prison inmate eligible for parole; and he was pardoned on condition that he be turned over to the immigration officers for deportation. The condition subsequent of such pardon, expressly accepted by him, was that he should never return to the United States. Thereupon he was deported, not by Michigan, but by Federal officers, acting pursuant to Federal law. He arrived in Italy, joined the Army of that country, deserted its ranks, fled to the United States, entered this country illegally, and later was apprehended by Federal authorities. In returning to the United States, he violated the condition of the pardon which he had accepted, and he thus became subject to reimprisonment to serve out his unexpired term. The Immigration Authorities surrendered him to Michigan.

B. We also respectfully submit there is no substance to the claim that the State of Michigan, through its delay in recapturing Cammarata, waived jurisdiction over his person, and that in so doing it denied him due process.

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[3] Fong Yue Ting v. United States, 149 U.S. 698.

The Supreme Court of Michigan in its opinion dismissing the writ of habeas corpus in this cause, after considering all of the circumstances, came to the conclusion that the parole board of the State did not waive jurisdiction of Frank Cammarata.

Petitioner's claim, as advanced in the court below, that Michigan's parole authority waived jurisdiction over Cammarata by procrastinating for a period of 4 years before attempting to incarcerate him, was based upon a letter (Exhibit 15) written by the bureau of pardons and paroles on January 20, 1947, to the Cleveland office of the immigration and naturalization service which, in part, read as follows:

> "Our parole board is not in the least interested in this matter and has no intention of interceding in any respect with any proceedings which you may have in mind."

Construing this letter and other correspondence, the Supreme Court of Michigan said, 341 Mich. at pp. 541-542 (Petition for Certiorari, pp. 48-49):

> "It should be noted that when this letter was written it was captioned, 'Re: Pardon Application of Frank Cammarata, #355.' We also note that at this time it was contemplated that petitioner would be deported unless pardoned. With this thought in mind we have no doubt that it was the position of our bureau of pardons and paroles that their failure to act would result in the deportation of petitioner, and it is in that light that we construe the January 20, 1947, letter authorized by the bureau of pardons and paroles.

"Petitioner relies on *In re Colin,* 337 Mich 491. In that case we held that parole officers of the State may not withhold exercise of their right to reimprison a parole violator and exercise it at some remote time at the whim or caprice of the parole board. The above case is not controlling of the issue in the case at bar. In the instant case the letter of the immigration and naturalization service in Detroit, Michigan, to the Michigan parole board under date of July 29, 1946, was a notification to it that petitioner was in the State of Ohio. The letter to the Cleveland, Ohio, office of immigration and naturalization service by the bureau of pardons and paroles under date of January 20, 1947, was a notification to the immigration service that the parole board of Michigan was not interested in the pardon of Frank Cammarata. We have in mind that when the above letter was written deportation proceedings were in progress and the parole board was aware of the fact that Frank Cammarata would be deported unless an executive pardon was granted. Viewed in this light it clearly appears that the parole board was still desirous of having Frank Cammarata deported. It also appears that on October 16, 1950, the Detroit office of the immigration and naturalization service notified the division of pardons, paroles and probation that:

"This office was informed by radiogram on October 6, 1950 as follows: 'The division of pardons, paroles and probation of the State of Michigan should be informed that deportation to Italy within a reasonable time is highly improbable as the service has to date been unable to secure the required travel documents and private bill HR 3890 is still pending.' "

Upon receipt of this letter the parole board promptly acted, as on November 14, 1950, it issued its parole violation warrant."

For present purposes we adopt the foregoing judicial analysis of the circumstances which induced the court below to hold that this petitioner has failed to establish a waiver of jurisdiction. And we respectfully submit that in reaching such a determination the court did not deny due process of law.

VI

Conclusion

We therefore respectfully submit that since no Federal question of substance is presented, the petition for certiorari should be denied.

Respectfully submitted,

Thomas M. Kavanagh
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of the State of Michigan

Edmund E. Shepherd
Solicitor General
of the State of Michigan

Daniel J. O'Hara
Assistant Attorney General
Counsel for Respondent

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APPENDIX

Appendix "A"

Petition for Writ of Habeas Corpus and Certiorari on behalf of Frank Cammarata

(Filed in Michigan Supreme Court January 11, 1954)

TO THE HONORABLE SUPREME COURT FOR THE STATE OF MICHIGAN:

Your Petitioner, Joseph W. Louisell, of the City of Detroit, County of Wayne, Michigan, respectfully shows:

1. That he files this Petition for and on behalf of FRANK CAMMARATA and that he is authorized so to do. That the said FRANK CAMMARATA is now imprisoned and restrained of his liberty by William H. Bannan, Warden of the Michigan State Prison, Southern Division, at Jackson, Michigan, and that he is so imprisoned and restrained of his liberty in the said Michigan State Prison, in the City of Jackson, County of Jackson, in said state.

2. That the said FRANK CAMMARATA is not committed or detained by virtue of any process, judgment, decree or execution specified in the 8th Section of Chapter 37 of the Judicature Act of the State of Michigan, as amended, which is Section 637.8 of the Compiled Laws of 1948 (Sec. 27.2251 M.S.A.).

3. That the cause or pretense of such confinement and restraint, according to the best of Petitioner's knowledge and belief, is a certain Parole Violation Warrant, so called, dated November 14, 1950, executed by one Herbert W. Straley, then Director of the Division of Pardons, Paroles

and Probation of the then existing Department of Corrections, of the State of Michigan, and attested to by one Gus Harrison, then State Supervisor of Paroles of the Division of the said Department; that the said Parole Violation Warrant therein recites, inter alia:

> "And Whereas, said prisoner was paroled from State Prison of Southern Michigan for Deportation to Italy on December 16, 1936; And Whereas, satisfactory evidence, in accordance with Sections 36 and 37 of Chapter II of Act No. 4, of the Public Acts of 1947, second special session, State of Michigan, has been presented to me that said parolee named herein has violated the terms of his parole; date of delinquency being, to-wit: on or between September 1, 1939 and December 1, 1939."

4. That the imprisonment and detention of the said FRANK CAMMARATA by the said William H. Bannan, Warden of the State Prison at Jackson, Michigan, is illegal, and that such detention is illegal for the following reason: The Department of Corrections, Division of Pardons and Paroles, on November 14, 1950, was wholly without jurisdiction over the person of FRANK CAMMARATA, and its order of that date adjudging FRANK CAMMARATA a parole violator is a nullity and should be declared such by this Court. The said Department's want of jurisdiction over FRANK CAMMARATA arises from:

A. The fact that it never acquired jurisdiction over the person of FRANK CAMMARATA, and

B. The fact that, if it ever did acquire jurisdiction, it effectively waived jurisdiction over FRANK CAMMARATA in 1946 and 1947.

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5. The Department of Corrections never acquired jurisdiction over the person of FRANK CAMMARATA because of these facts:

A. On February 26, 1931, FRANK CAMMARATA was sentenced in the Recorder's Court for the City of Detroit, upon his conviction of the offense of robbery, armed, to the State Prison of Michigan, Southern Division, for an indeterminate term of not less than fifteen (15) years and not more than thirty (30) years. The conviction was affirmed by this Court. 257 Mich. 60 (1932).

B. Thereafter, and on to-wit, the 16th day of November, 1936, the late Hon. Frank D. Fitzgerald, Governor of the State of Michigan, in the exercise of his constitutional authority so to do, commuted the said sentence so that the same did read: "Six and one-half years to thirty (30) years less good time allowance for deportation only."

C. On December 16, 1936, FRANK CAMMARATA was physically delivered into the custody of agents of the United States Immigration Service, at the Michigan State Prison, Jackson, Michigan, for Deportation to Italy; that the said FRANK CAMMARATA was thereafter transported forthwith by the said agents of the United States Immigration Service to Ellis Island, New York, from where he was deported to Italy on January 9, 1937.

D. That the purported basis for the said November 14, 1950 Parole Violation Order described in paragraph three (3) above is a certain unsigned document, now in the custody and possession of the Michigan Department of Corrections, Bureau of

Pardons and Paroles, carrying a type written date, December 16, 1936, purporting to have been issued at Lansing, Michigan, which, inter alia, recites:

"Whereas, it is desired to parole Frank Cammarata No. 29806 in custody of warden for delivery to Immigration Officials if and when called for, for deportation to Italy. In the event subject is not deportable, this action is void. Immigration authorities to hold this inmate against bail should he attempt to stay deportation. Must never return to the United States. Immigration authorities to notify parole department when subject actually leaves the country."

E. That to Petitioner's best knowledge and belief, said document described in paragraph "F" above was never in fact issued or executed by any lawful authority; was never delivered to the said FRANK CAMMARATA.

F. The Department of Corrections, Division of Pardons and Paroles, as successor to the "Office of Commissioner of Pardons and Paroles" could acquire no jurisdiction over FRANK CAMMARATA unless the said predecessor agency had granted a statutory parole to FRANK CAMMARATA.

F. The surrender of the custody of the person of the said FRANK CAMMARATA, in the manner above described, was not effected pursuant to a statutory parole, but instead was effected without regard to, and in absolute disregard of the then existing pro-

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visions of law relative to and governing the granting of a statutory parole.

H. The surrender of the custody of the person of the said FRANK CAMMARATA, in the manner above described, was effected solely and exclusively by virtue of the directive of the said late Hon. Frank D. Fitzgerald, then Governor of the State of Michigan, acting pursuant to the authority vested in him under Art. VI, Sec. 9, of the Michigan Constitution of 1908.

6. The department of Corrections, Division of Pardons and Paroles, effectively waived any further claim to or demand upon FRANK CAMMARATA, in the years 1946 and 1947, (if it ever had jurisdiction over him) because of these facts:

A. FRANK CAMMARATA was arrested by agents of the United States Immigration and Naturalization Service in the State of Ohio, on or about May 1, 1946. The Immigration Service immediately notified the Michigan Department of Corrections, by letter, of FRANK CAMMARATA'S arrest and detention at Cleveland, Ohio, and requested advice from the Michigan Department of Corrections as to whether or not FRANK CAMMARATA was wanted by the State of Michigan. The Michigan Department of Corrections, by letter, on at least two (2) occasions, and by telegram, on at least one (1) occasion, in the years 1946 and 1947, advised the Cleveland, Ohio office of the Immigration and Naturalization Service that the State of Michigan was in no way interested in FRANK CAMMARATA.

B. The records and files of the Michigan Department of Corrections affirmatively show that the said Department was continuously aware of the exact whereabouts of the said FRANK CAMMARATA from about May 1, 1946, until November 14, 1950, knew that FRANK CAMMARATA was available both in Ohio and in Michigan, but throughout said entire period of time wholly failed, refused and neglected to assert or claim any jurisdiction over him.

C. That it was within the power of the State of Michigan to reclaim the said FRANK CAMMARATA and take him into custody at any time after about May 1, 1946, but that the State of Michigan declined to do so, or to make any attempt to do so until November 14, 1950.

7. The present detention of the said FRANK CAMMARATA is in violation of law, and constitutes a denial of Due Process of Law as guaranteed the said FRANK CAMMARATA under Art. II, Sec. 16, of the Michigan Constitution of 1908, and Amendment XIV of the Constitution of the United States.

WHEREFORE, your Petitioner prays that a Writ of Habeas Corpus may be issued by this Honorable Court to inquire into the cause of the imprisonment and detention of the said FRANK CAMMARATA, and that the said FRANK CAMMARATA may be relieved therefrom; and

FURTHER, that this Honorable Court issue an ancillary Writ of Certiorari directed to the Michigan Department of Corrections to certify to this Court all of its records and files touching upon or relating to the said FRANK CAM-

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MARATA, and that upon the return thereof the said FRANK CAMMARATA be relieved of his present imprisonment and detention.

/s/ Joseph W. Louisell,
Joseph W. Louisell, Petitioner

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[Duly verified]